

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 13, 2021

3:06 p.m.

**DRAFT**

**MEMBERS PRESENT**

Representative Jonathan Kreiss-Tomkins, Chair  
Representative Matt Claman, Vice Chair  
Representative Geran Tarr  
Representative Andi Story  
Representative Sarah Vance  
Representative James Kaufman  
Representative David Eastman

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5**

"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

**HOUSE BILL NO. 55**

"An Act relating to participation of certain peace officers and firefighters in the defined benefit and defined contribution plans of the Public Employees' Retirement System of Alaska; relating to eligibility of peace officers and firefighters for medical, disability, and death benefits; relating to liability of the Public Employees' Retirement System of Alaska; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 5

SHORT TITLE: SEXUAL ASSAULT; DEF. OF "CONSENT"

SPONSOR(S): REPRESENTATIVE(S) TARR

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD
03/26/21	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/26/21	(H)	READ THE FIRST TIME - REFERRALS
03/26/21	(H)	STA, JUD
03/27/21	(H)	STA AT 1:00 PM GRUENBERG 120
03/27/21	(H)	Heard & Held
03/27/21	(H)	MINUTE(STA)
04/13/21	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 55

SHORT TITLE: PEACE OFFICER/FIREFIGHTER RETIRE BENEFITS  
 SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

02/18/21	(H)	PREFILE RELEASED 1/15/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, FIN
03/13/21	(H)	STA AT 1:00 PM GRUENBERG 120
03/13/21	(H)	Heard & Held
03/13/21	(H)	MINUTE(STA)
03/27/21	(H)	STA AT 1:00 PM GRUENBERG 120
03/27/21	(H)	Heard & Held
03/27/21	(H)	MINUTE(STA)
04/13/21	(H)	STA AT 3:00 PM GRUENBERG 120

**WITNESS REGISTER**

JOHN SKIDMORE, Deputy Attorney General  
 Office of the Attorney General  
 Department of Law  
 Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 5, answered questions.

RENEE MCFARLAND, Deputy Public Defender  
 Public Defender Agency  
 Department of Administration  
 Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 5, answered questions.

JOYCE SHORT, Executive Director  
 The Consent Awareness Network  
 New York City, New York

**POSITION STATEMENT:** Testified in opposition to HB 5.

JULIE SMYTH

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

JESSICA CLER, Alaska State Director

Planned Parenthood Alliance Advocates

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

TARALE SPIKE

Consent Awareness Network

New York City, New York

**POSITION STATEMENT:** Testified in opposition to HB 5.

LISA ELLANNA

Nome, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

CARMEN LOWRY, Executive Director

Alaska Network on Domestic Violence and Sexual Assault

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

LOUIS IMBRIANI

Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

SARAH BRYAN

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

ROSE HART

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

CYNTHIA GACHUPIN

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

MICHAEL PATTERSON

Party for Socialism and Liberation Anchorage

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

BRIAN HOSKEN

Alaska School Activities Association

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

SHANNON DAVENPORT

Alaska Nurses Association

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

LAURA RUBELI

Joyful Heart Foundation

New York City, New York

**POSITION STATEMENT:** Testified in support of HB 5.

BRENNAN HA

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

KIMBERLY WALLER

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

SHASA APPLGATE

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

KATIE BOTZ

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 5.

ANGELINA FRAIZE, Communications Officer

Anchorage Police Department Employees Association

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

DOUG SCHRAGE

University Fire Department

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

JACOB WILSON, Business Agent

Alaska Correctional Officers Association

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

COREY LUCK, Firefighter/EMT

Capital City Fire/Rescue

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

GERARD ASSELIN, Deputy Chief of Operations  
Anchorage Police Department  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

JUSTIN MACK  
Alaska Professional Fire Fighters Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

LIZ JONES  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of HB 55.

ELISE SORUM-BIRK, Staff  
Representative Andy Josephson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 55, answered questions on behalf of Representative Josephson, prime sponsor.

#### **ACTION NARRATIVE**

[3:06:49 PM](#)

**CHAIR JONATHAN KREISS-TOMKINS** called the House State Affairs Standing Committee meeting to order at 3:06 p.m. Representatives Tarr, Story, Claman, Vance, Kaufman, and Kreiss-Tomkins were present at the call to order. Representative Eastman arrived as the meeting was in progress.

^#hb5

#### **HB 5-SEXUAL ASSAULT; DEF. OF "CONSENT"**

[3:09:27 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5, "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

CHAIR KREISS-TOMKINS invited questions from the committee.

[3:10:59 PM](#)

REPRESENTATIVE EASTMAN sought to clarify the definition of "another person," which was utilized throughout the proposed legislation.

REPRESENTATIVE TARR, prime sponsor of HB 5, stated that the term was consistent with statutory language pertaining to crimes against another person. She added that she had not been asked to define "another person" in statute.

REPRESENTATIVE EASTMAN referred the question to the Department of Law (DOL).

[3:12:18 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Department of Law (DOL), stated that "person" is defined in AS 11.81.900(b)(47) as "a natural person and, when appropriate, an organization, government, or governmental instrumentality."

REPRESENTATIVE EASTMAN repeated his question, inquiring as to the meaning of "another person" with emphasis on "another."

MR. SKIDMORE explained that "another person" referred to someone other than the defendant. He added that in this case, the defendant would have [sexually assaulted] "some other person."

[3:13:07 PM](#)

REPRESENTATIVE EASTMAN considered a scenario in which two people met online and described [themselves] in ways that were less than truthful. He remarked:

Then, after the fact, the facts come out, does that qualify as another person? 'I thought I was going to be, you know, having this relationship with one person, I found out that it was totally a different kind of person than I thought they were.' Is that what we mean by another person?

MR. SKIDMORE explained that when considering these crimes, the law didn't care about the contact online and how someone represented themselves. He said the point of interest is that there were two individuals, one person who had engaged in sexual conduct with another person who had not consented. He added

that any previous representation about who they were was irrelevant for the purposes of determining whether this statute was violated.

[3:14:33 PM](#)

REPRESENTATIVE EASTMAN asked:

So, if I say I'm a person that doesn't exist and then engage in this conduct, and the other person that I say I am - James Doolittle - doesn't exist, is that a situation now where we're in the other person category? Or does it need to be another physical, living, breathing person?

MR. SKIDMORE replied that "[another] person" simply meant that the defendant engaged in sexual conduct with another person; it did not specify who that person had to be, because [the law] didn't care about who that person was, what representations they made, or whether it was the defendant or the victim that made misrepresentations about who they were. He said that could go to the identity of who the person was; however, with sexual assault, all that mattered was that there were two individuals, one of whom was not consenting.

[3:15:49 PM](#)

CHAIR KREISS-TOMKINS said he would allow one more follow-up question. He noted that he was not quite tracking the line of questions posed by Representative Eastman.

REPRESENTATIVE EASTMAN referred to Section 2, paragraph (5), which read:

(5) the offender engages in sexual contact with a person who is induced to believe by artifice, pretense, or concealment that the offender is another person.

REPRESENTATIVE EASTMAN said he was not understanding the answers to his question. He asked what about that other person would have had to be concealed to "trigger" this crime.

CHAIR KREISS-TOMKINS sought to confirm that Representative Eastman had asked if this language were to pass, how would DOL interpret it or apply it to cases.

REPRESENTATIVE EASTMAN clarified that he was wondering how the courts would interpret "another person," as the term was not defined under statute. He added that he was still "very hazy" over what exactly made this a crime.

CHAIR KREISS-TOMKINS directed the question to Mr. Skidmore.

MR. SKIDMORE pointed out that "another person" was utilized throughout the statutes in multiple sections. He apologized [for the confusion] and said he had now a better understanding of what Representative Eastman was asking. He explained that when [Section 2, paragraph (5)] referred to "another person," it was referring to instances in which there were two individuals who had engaged in sexual conduct and one of them believed that the person with whom they were engaging in that conduct with was someone other than who it actually was. He referred to a hypothetical pair of twins and offered the example of one twin engaging in sexual conduct with the spouse/significant other of the other twin; however, the spouse/significant other believed that they were [having sex] with the twin they were actually in a relationship with. Another example would be two people wearing the same outfit at a costume party, one of which [the victim] arrived with; subsequently, the victim consented to engage in sexual conduct with the identical costume wearer (not the person he/she arrived with) in a case of mistaken identity. He provided a third example of a case that occurred in Alaska in which a homeless person entered a home and engaged in sexual conduct with a woman lying in bed; however, the woman mistakenly believed her spouse was climbing back into bed, which was why she consented. Upon realizing it was a homeless person, she jumped up and was very upset. He noted the state was unable to prosecute because under current Alaska law, "without consent" required force and in that scenario, there was no force, just a mistaken identity. He conveyed that [Section 2, paragraph (5)] was referring to situations like the aforementioned examples.

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CHAIR KREISS-TOMKINS asked whether there was any public reporting or documentation of the case that occurred in Alaska that was not prosecuted [the third example by Mr. Skidmore].

MR. SKIDMORE said he was unsure whether there was a public report. He shared his understanding that some advocacy groups lobbying on behalf of the proposed legislation had referenced



the case. He added that the scenario was one that DOL was familiar with and had seen in the past.

3:20:50 PM

RENEE MCFARLAND, Deputy Public Defender, Public Defender Agency, Department of Administration (DOA), in response to the question from Representative Eastman regarding "another person," said Mr. Skidmore's explanation corresponded with her understanding of the sponsor's intent.

REPRESENTATIVE TARR shared another scenario that occurred in Alaska, in which a woman mistakenly engaged in sexual conduct with her boyfriend's brother who was pretending to be her boyfriend. She noted that the provision was generally referred to as "rape by fraud."

3:22:00 PM

REPRESENTATIVE KAUFMAN asked whether it would be considered a crime if someone gave a false name and number when meeting a new person.

CHAIR KREISS-TOMKINS shared his understanding that a sexual encounter must occur [for it to be considered a crime].

REPRESENTATIVE KAUFMAN said, "that's what I'm suggesting happens."

CHAIR KREISS-TOMKINS rephrased Representative Kaufman's question, asking whether it would fall under the scope of this language if someone met someone and gave a false name, and there proceeded to be a consensual sexual encounter between them.

MR. SKIDMORE answered no. He conveyed that this language was referring to a circumstance in which an individual was engaged in sexual conduct with someone other than whom he/she saw that it was. He stated that the mistaken belief that it was a different person was the significant point. He clarified that a "different person" did not mean someone's name, it meant different characteristics. He remarked:

And that's not based on 'I've just lied about what my name is,' that's actually based on, 'I wanted to have sex with person A, and it turns out that it's person B, unbeknownst to me.'

REPRESENTATIVE KAUFMAN asked whether Mr. Skidmore was confident that someone couldn't seek a prosecution based on the previous scenario he [Representative Kaufman] had suggested.

MR. SKIDMORE answered no, that was not the intent of the sponsor. He added that if this bill were to pass, that was not the type of case that DOL would file charges on.

3:24:50 PM

REPRESENTATIVE CLAMAN provided the following hypothetical:

A woman who loves to watch football ... goes to a party and meets a man who says, 'I play football for the Seattle Seahawks,' and the woman thinks 'I always wanted to have an intimate relationship with somebody that plays football for the Seattle Seahawks,' and they have a really good time and ... engage in sexual relations and ... she then goes and looks at the roster of the Seattle Seahawks in the morning and finds that the picture of the person [who] has that name isn't this person that she just spent the night with. Can that person now be prosecuted for rape?

MR. SKIDMORE answered no, DOL would not file charges on that case. He provided the following explanation:

If ... I meet Sam at the bar and Sam's the person that I'm then going to engage in those sexual relations with, if I have the false belief that Sam has a particular profession, [then] no, ... that's not the type of fraud that's contemplated.

MR. SKIDMORE continued to explain that [rape by fraud] was for situations where an individual literally thought they were having sex with "Sam" and it turned out to be someone else because, for example, "Sam" was wearing a costume or had a twin.

REPRESENTATIVE CLAMAN said it sounded like a discretionary call on DOL's part. He shared his understanding that pretending to be a football player for the Seattle Seahawks was artifice or pretense. He asked why the statutory language [in Section 2, paragraph (5)] wouldn't cover the hypothetical situation he had suggested.

MR. SKIDMORE conveyed that based on the legislative intent that had been communicated thus far, that was not DOL's understanding

of the purpose [of that language]. He explained that if a prosecutor filed that charge, the defense would say, "that's not what this law was intended to do, here's the legislative intent that supports it." He suggested that people would then listen to these hearings and the debate that occurred here.

3:29:11 PM

MS. MCFARLAND, in response to Representative Claman's question regarding the hypothetical scenario, agreed with Mr. Skidmore; however, she said she recognized the risk that the statutory language presented. She recalled that the Alaska Supreme Court had communicated that legislative history was more convincing with clearer statutory language. She suggested clarifying through this language that the legislature did not intend to permit prosecutions in which an individual misrepresented his/her attributes in order to engage in sexual conduct while not attempting to be an actual different person.

3:30:43 PM

REPRESENTATIVE EASTMAN opined that the statutory language [in Section 2, paragraph (5)] seemed "unusual" because it didn't specify that the artifice, pretense, or concealment must come from the offender. He considered the following scenario:

A fraternity ... is communicating one thing to a victim, the victim believes something, the offender may or may not have any knowledge of what's going on there. Yes, you have the victim [who] was induced to believe this is another person.

REPRESENTATIVE EASTMAN believed that the construction of the statute was strange because "we're separating ... the offense from who's doing the deceiving or concealing." He asked why it was written that way.

MR. SKIDMORE defined two criminal law concepts: "mens rea" was the offender's mental element and "actus reus" was the act that they engaged in. He explained that the victim's actions or perceptions were never discussed because the focus was always on the defendant. He clarified that the defendant engaged in sexual contact with a person who was induced to believe by artifice, pretense, or concealment that the offender was another person. He elaborated:

The offender would need to be knowingly engaging in the conduct and would have to be reckless as to the fact that the victim thinks that they are someone other than who they actually are.

MR. SKIDMORE added the state would be required to prove [the mens rea] of the offender, not the victim.

[3:33:47 PM](#)

REPRESENTATIVE EASTMAN said he understood [the meaning of] mens rea. He opined that the language in question could be executed by someone other than the offender. He wondered whether that was an oversight or an intentional decision by the drafters.

CHAIR KREISS-TOMKINS, to clarify the question, remarked:

If ... Sam is going on a blind date with Jack and the person who set it up ... communicates to Sam that the real Jack is actually Joe who ... has such and such artificial identity, as set up by the blind date mediator.

CHAIR KREISS-TOMKINS asked whether that exemplified Representative Eastman's question.

REPRESENTATIVE EASTMAN answered in the affirmative. He remarked

The other person has been induced to believe that this is another person; the offender is going along with it, even though it wasn't necessarily [his/her] idea ... but then, the date ends, there's a sexual encounter, and now ... it looks to me like we have a situation of rape.

MR. SKIDMORE explained that the trouble with that hypothetical was that it reverted to the scenario of "thinking that this was someone different than who you thought you were going to meet up with." He believed that this statute would not criminalize the conduct in that scenario. He provided an alternative example to better illustrate Representative Eastman's point:

You go to the costume party, and you have two people dressed as, say, spiderman, and the offender didn't dress up as spiderman with the intent or the thought that, 'Hey, there's [going to] be another spiderman there, and I'm going to be able to engage in sexual

relations with that spiderman's significant other they brought to the party.' But what ends up happening is there's an opportunity, the offender is now engaging in ... sexual relations ... with the victim.

MR. SKIDMORE explained that the offender's mental state at the time of the offense would have had to be reckless as to whether the victim thought they were someone else.

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REPRESENTATIVE VANCE directed attention to Section 3, paragraph (4), and opined that it did not make sense mathematically. She asked whether the phrase "and at least 10 years younger" was necessary and why it was written that way.

MR. SKIDMORE said the section in question mirrored language that was currently used in the sexual abuse of a minor (SAM) statutes. The concept revolved around an offender of a certain age and a victim, aged 13, 14, or 15. He explained that there could never be, for example, a 17-year-old offender engaging in conduct with an individual who was 15 because that would not be a 10-year age gap. Alternatively, this particular language would apply if the offender was at least 25. He noted that in current statutes the age gap was four years; therefore, the proposed legislation would add a larger age gap that criminalized at a higher level.

[3:40:01 PM](#)

CHAIR KREISS-TOMKINS asked whether a [sexual] relationship between a 17-year-old and a 27-year-old would be criminalized and constitute sexual abuse of a minor.

MR. SKIDMORE replied in the affirmative.

CHAIR KREISS-TOMKINS inquired about the sentencing ranges for sexual abuse of a minor in the first degree.

MR. SKIDMORE stated that sexual abuse of a minor in the first degree was an unclassified sex offense; the first offense was 20-30 [years]; the second offense was 30-40; and a third offense was 40-60. He noted that there was a maximum of 99 [years] and other factors that played into it.

[3:41:34 PM](#)

REPRESENTATIVE VANCE inquired about the prosecution of a 17-year-old and a 27-year-old under current law. She asked how that would be classified.

CHAIR KREISS-TOMKINS understood that under current law it was not a crime.

REPRESENTATIVE VANCE asked what the crime would be [if a 17-year-old and 27-year-old] engaged in a sexual relationship that was not consensual.

MR. SKIDMORE said it would be sexual assault. He relayed that the age range dealt with "statutory rape," also referred to as sexual abuse of a minor.

[3:44:09 PM](#)

REPRESENTATIVE TARR in response to a question from Representative Vance regarding the processing of sexual assault examination kits, said the six-month requirement would not be effective until July 1, 2023, per the crime lab's request for more time to hire and train enough staff. Further, she clarified that the rape by fraud provision was not intended for misrepresentations that occur in online dating.

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CHAIR KREISS-TOMKINS [opened public testimony.]

[3:46:39 PM](#)

JOYCE SHORT, Executive Director, The Consent Awareness Network, and author of "Your Consent: The Key to Conquering Sexual Assault," spoke from the following prepared remarks:

While I'd like nothing better than to embrace a bill to prevent sexual assault, I cannot support HB 5 in its present form and the reason is simply contradiction.

HB 5 correctly states that consent is a freely given agreement; therefore, by its very nature, such agreement cannot be achieved through malice, such as force, fear, or fraud. I like to call them the three F words, which should never take place in sexual conduct.

The conduct of the accused in securing the agreement is what matters when establishing if consent took place. Did they employ a malicious means to secure their victim's agreement? If so, regardless of the words and actions of their victim, their victim did not consent. But HB 5 uses the words and actions of the victim as the criteria to determine whether they consented. HB 5 clearly states the freedom to choose - free of undue influence - and the disregard for this freedom is also stated freely in the very same provision.

The words and actions of the accused determines whether they committed murder, larceny, kidnapping, theft, and a host of other crimes and the words and actions of the accused determine whether or not they committed a sexual assault. HB 5 contradicts the premise that consent must be freely given and instead, blames the victim for their own rape and defilement. Agreement from a person who was scared into agreeing is acquiesce; agreement by a person who was defrauded into agreement is ascent. Missouri's rape in the second-degree statute states "ascent is not consent when induced by force, duress, or deception.

I urge legislators to adopt the definition for consent proposed in Assembly Bill A6540 in New York. It makes clear that malicious influence and sexual contact is a crime. The identical bill is also awaiting an index number in new Jersey and has been drafted and awaits introduction in Pennsylvania. I further urge legislators to strike the rape mentality that blames victims, not the offender, whose premeditated malice restricted their victim of their self-worth and shattered their trust. A person's body is not the offender's entitlement, it's where they live. And Alaska's laws should protect the bodily autonomy of every resident or visitor to your great state.

[3:49:43 PM](#)

REPRESENTATIVE TARR informed committee members that she tried to work with Ms. Short for months; however, Ms. Short's suggestions were not feasible. She said in working with Alaska statutes, she had reviewed the options and created a definition [of consent] that works for Alaska. She added that she had asked

Ms. Short "not to confuse the matter, but she chose to call in today."

CHAIR KREISS-TOMKINS asserted that when public testimony was held, members of the public could testify without fear of being rebutted. He indicated that the public could say what they wanted; committee members would consider the merits of their comments; and [concerns] would be "hashed out" as a committee.

[3:50:33 PM](#)

REPRESENTATIVE CLAMAN asked Ms. Short to repeat the New York citation and asked whether it was a bill number or a statute number.

MS. SHORT clarified that the bill number was A6540.

REPRESENTATIVE CLAMAN asked what year the New York State Legislature passed the bill.

MS. SHORT explained that the bill had just been introduced in the legislature [in 2021].

[3:51:38 PM](#)

JULIE SMYTH stated her support for HB 5; however, she recommended widening the definition of "fraud" to include more victims in Alaska. As a client of the Interior Alaska Center for Nonviolent Living, she recalled hearing stories from other women who had to file [sexual assault] charges. Further, she pointed out that it was up to law enforcement to determine whether consent was given. She opined that the proposed legislation would help Alaskan communities. She encouraged the men who had asked questions about how the bill would implicate offenders to consider times when the women in their lives may have talked about their boundaries being crossed. She said this issue was a major one and asked for [the legislature's] help. She urged committee members to worry more about the victims, as 99 percent of them never got to see their cases in court.

CHAIR KREISS-TOMKINS questioned whether there was an expanded definition [of fraud] that would help encompass cases that were unable to be prosecutable.

MS. SMYTH offered to email her response to the committee.

[3:54:56 PM](#)



JESSICA CLER, Alaska State Director, Planned Parenthood Alliance Advocates, expressed her support for HB 5 and urged the committee to move the legislation forward. As a trusted provider for sexual assault survivors, she reported that Planned Parenthood was deeply committed to advancing policies and programs that worked to reduce sexual assault; provided support for sexual assault survivors; and helped survivors seek justice. She believed that by updating the definition of consent and addressing the backlog of sexual assault exam kits, the proposed legislation would have a direct positive impact on survivors across the state. She reported that Alaska's sexual assault rates were unacceptably high; further, the rates were likely underestimated because sexual assault was often tragically underreported. She stated that survivors of sexual assault feared coming forward, in part, because Alaska statutes were insufficient to adequately prosecute attackers. She continued to explain that when survivors reported an assault, they often faced doubt and judgement and had to navigate a legal process that was often humiliating. She conveyed that Alaska's definition of consent placed an unreasonably high burden of proof on both survivors and the prosecution to prove that the assault occurred. Further, the statute required the use of force, threat, or deception and that the offender was mentally aware that he/she did not have consent. In reality, she said, the psychological and physiological responses to sexual assault often led survivors to freeze, which effectually makes it impossible for them to fight back. She said Alaska's current definition of consent not only failed to accurately capture the realities of sexual assault, but it also placed a burden on survivors that is so high, it prevented the state from holding perpetrators accountable. She believed that the new definition in HB 5 would allow courts to consider a variety of factors when determining whether consent was present. Additionally, the bill would require labs to test sexual assault kits within six months. She urged the committee to move this critical piece of legislation forward.

[3:57:54 PM](#)

TARALE SPIKE, Consent Awareness Network, informed committee members that she testified against Harvey Weinstein in his 2020 federal trial. She stated that she respectfully opposed HB 5 in its current form because she believed it would perpetuate a victim-blaming mentality. She explained that it was the words and actions of the offender that influenced the decision-making process of the victim, which constituted a crime. She urged

Alaskans to read the language in the New York state bill A6540. She opined that implementing a common definition of consent would make prosecuting such cases equal across the board. Further, she relayed that A6540 clearly stated that the same consent that protected a person's property, also protected his/her body.

[3:59:54 PM](#)

LISA ELLANNA expressed her appreciation for the bill sponsor and stated her support for the bill. She opined that the proposed legislation would satisfy the need for stronger prosecutorial tools to hold offenders accountable given the outdated and inadequate language in Alaska's current sexual assault laws. She pointed out that [in Alaska], victims of rape could run into their perpetrators many of whom were living their lives as if they did nothing wrong. Further, she reported that many victims experienced rape-related PTSD [post-traumatic stress disorder], which kept them from working or caused them to lose their jobs or homes - some even took their own lives. She urged the committee to move the proposed legislation forward, as it was long overdue. She said moving HB 5 out of committee would communicate its importance to women in this state.

[4:02:19 PM](#)

CARMEN LOWRY, Executive Director, Alaska Network on Domestic Violence and Sexual Assault, offered her "enthusiastic and unqualified" support for HB 5. She believed that the proposed legislation would be a vehicle for offering more justice to sexual assault victims of all ages. She cited a 2019 report on felony sex offenses, relaying that the rate of sexual assault in Alaska was four times the national average. Additionally, the report indicated that Alaska Native females had the highest victimization rate of any aggregate, accounting for 50 percent of all victims. Nearly 52 percent of all reported victims were children under the age of 18; the most common age of a female victim was 15; the average age [of all victims] was 18; and the most common age of a male victim was 5. She said these were the victims that deserved justice. She urged the committee to move the proposed legislation forward.

[4:04:43 PM](#)

LOUIS IMBRIANI stated his support for HB 5. He emphasized the need to change the statutory language pertaining to ages. Age difference, he said, was an important factor when prosecuting a

sexual crime, as it showed the predation or manipulation of younger victims. He opined that changing the language would provide the prosecutors with better tools to ensure that those who perpetrated against younger people were brought to justice.

4:05:50 PM

SARAH BRYAN explained that she grew up in a state that lacked a robust definition of consent. She said in order to receive medical treatment or legal remedies, survivors had to prove that their experiences fell within a narrow definition. She recalled that she had already internalized that message by the time she was raped at age 18. She said she did not report the assault out of fear. Further, she stated that she had no way to distinguish what had happened to her from a consensual encounter. She conveyed that the language in the proposed legislation addressed this paradigm failure by writing the absence of consent into Alaska's definition of sexual assault. She reported that the bill sponsor had worked for years to tailor the bill language around the needs of Alaska's communities. She opined that without addressing consent and its absence, statutes misapprehended sexual assault. She believed that HB 5 would rectify the currently flawed definition of sexual assault in Alaska.

4:07:35 PM

REPRESENTATIVE TARR thanked Ms. Bryan for testifying and sharing such a personal disclosure.

4:08:13 PM

ROSE HART expressed her support for HB 5 and urged its passage. Growing up as a daughter of a Los Angeles, California cop, she recalled having an acute understanding that, at some point, she would be assaulted and that little could be done to prevent it and even less to deliver any form of justice. She reflected on her college campus job where she learned about consent. She said she felt empowered knowing that consent was definable, retractable, and could only be given by a competent person. She believed that the proposed definition of consent in HB 5 would also empower and better protect survivors of inner-personal dating violence and hold perpetrators accountable across the state. She urged the legislature to help make Alaska safe for women and survivors by passing this legislation.

4:10:22 PM

CYNTHIA GACHUPIN stated her support for HB 5 as a woman and a mother of a teenage daughter. She said she was surprised to learn about Alaska's lacking sexual assault laws, which suggested that her daughter would be safer in California. She expressed her hope that the legislature would take the chance to update the outdated laws [by passing the proposed legislation].

[4:12:19 PM](#)

MICHAEL PATTERSON, Party for Socialism and Liberation Anchorage, expressed his support for HB 5. He reported that Alaska had one of the highest rates of sexual violence in the country. He said Alaska's consent law was outdated and inadequate. He opined that the Thirty-Second Alaska State Legislature had an obligation to right this wrong. He understood that the proposed legislation would modernize the consent statute and give parent's additional tools to keep their children safe. Further, the bill would require that sexual assault kits were tested within a reasonable time. He believed it was shameful that many survivors of sexual assault were denied justice because Alaska lacked the resources to test the kits. He continued by sharing his belief that sexual assault law in its current form was an "act of state violence," as survivors had to heal from the personal trauma of being assaulted and "pay for the fact that Alaska doesn't have their back." As an Iraq war veteran, he shared a personal anecdote about an acquaintance who was assaulted and received no help from the army. He urged the committee to move this legislation forward as expeditiously as possible.

[4:14:54 PM](#)

BRIAN HOSKEN, Alaska School Activities Association, stated his support for HB 5 and its refined definition of consent. He informed the committee that his primary role at the Alaska School Activities Association (ASAA) was to facilitate the Coaching Boys into Men (CBIM) program, which was an evidence-based comprehensive violence prevention program designed to inspire coaches to teach their athletes the importance of respect for themselves, others, and women. The program incorporated strategies, scenarios, and resources needed to talk with boys specifically about healthy and respectful relationships, dating violence, sexual assault, and harassment. Additionally, CBIM recognized how influential sports was on the culture and lives of young people and was designed to utilize and leverage the social capital held by athletes. He opined

that the principles of teamwork and fair play made athletics the ideal platform to teach healthy relationship skills on. He continued to explain that he trained coaches to teach a curriculum designed for a 12-week sports season in which weekly training lessons are presented from the coach to the athletes. He noted that week six of the curriculum presented "understanding consent," later asserting that the current definition was inadequate. He offered his belief that the proposed legislation would further define and help this teaching component and that many of the topics incorporated by CBIM and HB 5 mutually validated the need for a preventative educational component and accountability for perpetrators. He opined that the clarification and affirmative definition of consent in this legislation would strengthen the scholastic elements of CBIM. To conclude, he said he looked forward for the opportunity to employ HB 5 in coordination with a statewide implementation of CBIM to further education Alaska's youth with the objective of eradicating violence towards women.

4:17:39 PM

SHANNON DAVENPORT, Alaska Nurses Association, shared her support for HB 5. She reflected on her work in pediatrics over the last decade, during which time she cared for victims of sexual assault. She said a majority of those victims were ages 13-17 whose perpetrators tended to be family members. She stated that her support for the proposed legislation gave them a voice. She opined that the proposed legislation would impact how victims were cared for and change the perception of them. She said Alaska needed to become a community of understanding and support rather than a society that blamed and shamed victims for coming forward.

4:19:41 PM

LAURA RUBELI, Joyful Heart Foundation, stated her support for HB 5 as it would ensure the swift testing of rape kits. She informed committee that members that the Joyful Heart Foundation was founded by actress and advocate, Mariska Hargitay, to help survivors heal. Since 2010, the foundation made eliminating the untested rape kit backlogs its top priority. She reported that among the 19 states with codified lab testing timelines for sexual assault kits, Alaska's testing mandate was the longest at one year. She noted that average testing turnaround times was about 100 days and conveyed that a shorter testing timeline would potentially prevent more crime, including serial rapes. In addition to creating safer communities, swift testing

timelines would send a message to survivors that they and their cases mattered, and that justice and healing was a priority in Alaska. She urged legislators to "vote yes" on HB 5.

[4:21:43 PM](#)

BRENNAN HA expressed his support for HB 5. He said he found the state's issue with sexual assault to be one of the most unattractive factors about living in Alaska. He reflected on the "horrific" incidents he witnessed working as a first responder. He opined that if the statistics were lower, Alaska would be a better place to live. He urged the enactment of the proposed legislation to help protect his loved ones and fellow Alaskans.

[4:23:34 PM](#)

KIMBERLY WALLER, said it was shameful that so little had been done to protect the women of this state, especially since Alaska wore the "sad crown" of highest rate of rape, domestic violence, and domestic homicide. She believed much of the problem was associated with the lack of education. She asserted that if Alaska's leaders wanted women and families to continue populating the state and greatly contributing to its economy, the lack of action and protection for the most vulnerable had to be atoned for. She offered her belief that HB 5 was a step in the right direction. Further, she touched on her own experience with sexual assault and the Fairbanks police that "botched" the evidence, she said. She indicated that women were closely watching the progress of the proposed legislation, later maintaining that no community could flourish if women did not because they were the backbone. She strongly encouraged the enactment of this legislation.

[4:26:30 PM](#)

REPRESENTATIVE TARR thanked Ms. Waller for sharing her personal disclosure.

[4:26:53 PM](#)

SHASA APPLGATE, spoke from the following prepared remarks:

Dear committee members, my name is Shasa Applegate and I'm from Anchorage, Alaska, and I'm a senior currently attending Service Highschool. Not only am I in Support of HB 5, but I've gotten nearly 700 signatures

from other Alaskan residents who are in support of this bill as well, most of whom are in my age group.

As a survivor of sexual assault and speaking on behalf of a friend who has experienced it firsthand as well, the definition of consent is extremely important. Many teenagers are not aware that consent can be revoked and making that clear by passing this bill will make a life changing difference for me and many others. I did not report my sexual assault because I didn't feel like I had a voice but passing this bill would give people that voice.

Time and time again, election after election, we hear candidates from this very body, state that they are interested in protecting public health, ending the cycles of sexual violence in our communities, increasing public safety, and supporting law enforcement. Now is the time to make good on those promises by putting pen to paper and passing this bill. You have the power to protect us, so use it.

[4:28:31 PM](#)

REPRESENTATIVE TARR thanked Sasha for her courage and congratulated her for gathering 700 signatures.

[4:29:06 PM](#)

KATIE BOTZ expressed her wholehearted support for HB 5 and thanked the bill sponsor for continuing to address sexual abuse in Alaska. She asked [legislators] to be victim oriented instead of politically oriented. She asserted that sexual assault should be Alaska's top priority, as well as redefining consent. She reflected on her own experience with sexual abuse and urged the enactment of the proposed legislation.

[4:33:07 PM](#)

REPRESENTATIVE TARR thanked Ms. Botz for sharing her personal story.

[4:33:23 PM](#)

CHAIR KREISS-TOMKINS closed public testimony and announced that HB 5 was held over.



^#hb55

**HB 55-PEACE OFFICER/FIREFIGHTER RETIRE BENEFITS**

[4:33:39 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 55, "An Act relating to participation of certain peace officers and firefighters in the defined benefit and defined contribution plans of the Public Employees' Retirement System of Alaska; relating to eligibility of peace officers and firefighters for medical, disability, and death benefits; relating to liability of the Public Employees' Retirement System of Alaska; and providing for an effective date."

[4:34:01 PM](#)

CHAIR KREISS-TOMKINS opened public testimony on HB 55.

[4:34:36 PM](#)

ANGELINA FRAIZE, Communications Officer, Anchorage Police Department Employees Association, informed the committee that this was her twentieth year working in Alaska law enforcement. She noted that she was grandfathered into PERS Tier III, which provided a twenty-year pension. She reported that her 2017 Anchorage Police Department academy started with 21 officers of which only two were still with the department in 2021. She recounted her experience training officers and watching them leave after five years to work in other states. She said Alaska had many great selling points but lacked a pension. She expressed concern for the future of the Anchorage Police Department, as officers were being recruited by other departments after receiving expensive training in Alaska. In conclusion, she opined that money was being wasted to train individuals who ended up leaving.

[4:38:58 PM](#)

DOUG SCHRAGE, University Fire Department, spoke in support of HB 55. He informed committee members that as a 39-year practitioner in Alaska fire departments, the goal of his testimony was to share his observations on the outmigration of Alaska's firefighters. He indicated that municipal fire departments in Alaska had become revolving doors and essentially training grounds for fire departments in other states. He explained that firefighters in Alaska were receiving training



and serving out their probationary periods; subsequently, some were being recruited by fire departments in Washington and the Pacific Northwest. Those recruitments were through lateral hires, indicating that those out-of-state departments saved the cost of recruiting and training. Meanwhile, Alaska's fire departments were recruiting, training, and equipping firefighters at significant expense on a perpetual basis. He suggested that the outmigration "blossomed" following the implementation of Tier IV. He recalled that prior to 2008, firefighters leaving for other states was "virtually unheard of." Furthermore, he noticed that fewer Alaskans were applying for firefighting jobs in Alaska, which he assumed was also due to Tier IV. He urged committee members to recommend a "do pass" for the proposed legislation.

[4:40:55 PM](#)

JACOB WILSON, Business Agent, Alaska Correctional Officers Association (ACOA), expressed his support for HB 55. He noted that during the 10 years he represented correctional officers in Alaska he had spoken with hundreds if not thousands of officers concerning their retirement, as well as their reasons for coming to/leaving the Department of Corrections (DOC). He indicated that Alaska was facing a significant recruitment and retention crisis. One of the root causes of this crisis, he said, was the defined contribution retirement system and its inability to compete with the benefits offered by other law enforcement agencies around the country. He reported that between January 2015 and January 2021, 652 correctional officers had left ACOA's bargaining unit, which was just under 70 percent of the total workforce. He explained that every time DOC lost an experienced officer, the department was forced to backfill that position with an inexperienced recruit, which costed the state money. Further, when the department was forced to hire over 100 new recruits per year, it systematically compromised safety and security in the state. In summary, he asserted that Alaska needed to address its recruitment and retention problems. He concluded that HB 55 would be a huge step in the right direction.

[4:43:37 PM](#)

COREY LUCK, Firefighter/EMT, Capital City Fire/Rescue ("CCFR") stated his support for HB 55. He reported that 25 percent of CCFR's staff was hired prior to 2006; 50 percent were currently eligible for retirement and 40 percent would be eligible to retire within the next two years. Additionally, 50 percent of

CCFR's staff had less than five years on the job and 30 percent of CCFR's Tier IV employees planned on leaving in the next five years. He included himself in the latter group, explaining that he had been recently offered a position with a fire department in Washington with a defined benefit plan. He said, "to be quite honest, it would be hard to turn that [down] at this point." He encouraged the committee to move the proposed legislation forward, later adding his belief that public safety in Alaska depended on it.

[4:45:32 PM](#)

GERARD ASSELIN, Deputy Chief of Operations, Anchorage Police Department, stated his support for HB 55 and provided a brief description of his work experience within APD. He relayed that demands on the policing profession had increased, which made it harder to recruit and caused officers to reevaluate their desire to stay. He recounted that police officers had been leaving every month for departments across the nation and emphasized the loss of productivity that occurred, as well as the decrease in proficiency that came with lack of experience. Further, patrol sergeants reported that in addition to recruitment and retention, the biggest problem was the age of officers, as the workforce was skewing younger. He indicated that the proposed legislation presented an opportunity to put Alaska in a competitive posture to maintain the best public safety professionals. He urged the committee to support the bill and thanked them for their efforts on this issue.

[4:49:23 PM](#)

JUSTIN MACK, Alaska Professional Fire Fighters Association (APFFA), indicated that there was widespread support for HB 55 within APFFA. He explained that since 2006 when Alaska began placing all new state and municipal employees into the defined contribution system known as Tier IV, Alaska had experienced many unintended consequences. He said the clearest consequence was the competitive disadvantage in recruiting and retaining public safety employees. He stated that there was a significant cost to doing nothing and reported that too many public safety employees had cited "lack of retirement" as the primary reason for leaving the state. Further, departments across Alaska were hiring and training officers that had no long-term plans to stay in the state. Alaska was becoming a training ground, he said. He explained that recruitment and retention dollars were having to be reinvested several times over, which was wreaking havoc on public safety budgets. Not only was it financially impacting

municipalities and the state but a widening gap in experience was being noticed as well, as the most talented public safety workers were leaving. He reiterated APFFA's strong support for the bill.

[4:52:22 PM](#)

LIZ JONES, read the following prepared remarks on behalf of her husband, Jeffrey Jones:

I am a fire medic and have been with the department since July of 2007 making it 14 years in a few months. A return to a DB plan can help the state and municipalities mitigate the costs associated with training and turnover (indisc.) with existing DB plans.

In my time with the department, I received multiple certifications. I am a Fire Officer III, Firefighter II, Paramedic - I also have my associates degree in paramedicine - Fire Instructor II, CPR and multi-level EMT instructor, and am the only child passenger safety technician in Ketchikan. This was all accomplished with a cost to the city. I'm not saying that I'm not irreplaceable, but I can tell you, it will be a very long time and a lot of money before someone earns all the certifications that I have.

My family is actively searching for a new place to call home to a state that has a DB program. My family has roots here in Alaska and I don't want to relocate them, but it is well known that if a fire fighter works after 55 it puts them at a greater risk of dying due to line of duty deaths, including heart attacks. I would like to be able to hold my grandchildren and to enjoy my retirement.

I started when I was 28 and will not realistically be able to retire at an age that affords me the ability to do so. At 58 I will have 30 years in my DC plan; still, not enough to retire. Can you imagine a 58-year-old carrying someone down a flight of stairs and out of a fire? Not saying that it cannot be done or won't be attempted, but it puts me, the public, and my coworkers at a higher risk.

The relatively small increase in the cost of the proposed DB program is money well spent when you consider the value of retaining employees throughout a career as opposed to training new people and not having benefits in place to keep them. This cycle is already happening, resulting in the export of home-grown talent to states with better options for retirees. I encourage you to pass HB 55. Thank you for your time and consideration for this bill.

[4:55:32 PM](#)

CHAIR KREISS-TOMKINS closed public testimony on HB 55 and invited questions from committee members.

REPRESENTATIVE TARR said, "don't give up on us yet," to those who were considering leaving the state.

REPRESENTATIVE EASTMAN asked when Tier I obligations and liabilities would be paid without the bill compared to when they would be paid if HB 55 were to pass. Additionally, he questioned whether documents had been provided to the committee that addressed that timeline.

[4:57:18 PM](#)

ELISE SORUM-BIRK, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor, directed Representative Eastman to an actuarial report [included in the committee packet], which was conducted by the state's actuary, [Buck Global, LLC]. She deferred the question to Mr. Puckett, Division of Retirement and Benefits, Department of Administration (DOA).

[4:57:58 PM](#)

CHAIR KREISS-TOMKINS announced that HB 55 was held over.  
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[4:58:10 PM](#)

CHAIR KREISS-TOMKINS provided closing remarks on reviewed the upcoming schedule.

REPRESENTATIVE TARR apologized for her earlier interjection [during public testimony on HB 5]. She said she had failed at what she was attempting to accomplish, which was to let folks

know that she had tried to consider some of the suggestions [from Ms. Short]. She added that it was not her intention for it have come across as a rebuttal.

5:00:50 PM

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 5:00 p.m.